

**REMARKS**

Favorable reconsideration of this application, in light of the preceding amendments and following remarks, is respectfully requested.

Claims 15-29 are pending in this application. By this Amendment, claims 15 and 29 are amended. No new matter is added. Claims 15 and 29 are the independent claims.

**Request for Acknowledgments**

Applicants respectfully note that the present action does not indicate that the claim to foreign priority under 35 U.S.C. §119 has been acknowledged or that certified copies of all priority documents have been received by the U.S.P.T.O. Applicants respectfully request that the Examiner's next communication include an indication as to the claim to foreign priority under 35 U.S.C. §119 and an acknowledgement of receipt of the certified copies of all priority documents.

Applicants also respectfully note that the present action does not indicate that the drawings have been accepted by the Examiner. Applicants respectfully request that the Examiner's next communication include an indication as to the acceptability of the filed drawings or as to any perceived deficiencies so that the Applicants may have a full and fair opportunity to submit appropriate amendments and/or corrections to the drawings.

**Applicants' Initiated Interview Summary**

The courtesies extended to Applicants' representative, **David J Cho, Reg. No. 48,078**, during a telephonic interview with Examiner White and Primary Examiner Alexander conducted on May 17, 2010, are acknowledged and appreciated. The substance of the interview is set forth in the Examiner's Interview Summary and in the following Applicant Initiated Interview Summary. As required by 37 C.F.R. § 1.133(b), Applicants' summary of that interview is as follows:

**1. Brief Description of any Exhibit Shown**

No exhibit was shown or demonstrated during the interview of May 17, 2010.

**2. Identification of the Claims Discussed**

The Examiner and Applicants' representative discussed independent claims 15 and 29.

**3. Identification of the Specific Prior Art Discussed**

The Examiner and Applicants' representative discussed U.S. Patent Publication No. 2002/0101310 to Jennings ("the Jennings reference") and U.S. Patent No. 4,693,867 to Commarmot et al. ("the Commarmot reference").

**4. Identification of the Proposed Amendments**

Amendments were proposed during the interview of May 17, 2010.

**5. Summary of the Arguments Presented to the Examiner**

Applicants' representative presented arguments regarding the failure of the Jennings and the Commarmot references to disclose the subject matter of independent claim 15. More specifically, Applicants' representative argued that the applied references fail to disclose or suggest "cap securing the vessel to the sleeve while

clamping the diaphragm for sealing the open upper end of the vessel,” as recited in claim 13. Moreover, Applicants’ representative argued that one of ordinary skill in the art would not attempt to combine the teachings of Commarmot with the teachings of Jennings, i.e., one of ordinary skill in the art would not incorporate a diaphragm into the apparatus of Commarmot because such a diaphragm would keep fumes/vapors locked inside the reaction vessel, and the suction unit would not be able to remove the fumes/vapors through the cover 90 as required.

Applicants’ representative presented further claim amendments to distinguish over the applied references. For instance, Applicants’ representative suggested revising claim 15 (and claim 29) to include that “the cap extending over the diaphragm and the sleeve so as to secure the vessel to the sleeve while clamping the diaphragm for sealing the open upper end of the vessel.” See FIG. 5.

An agreement was reached that the Jennings and the Commarmot references, individually or in combination, fail to disclose the above recited feature.

#### 6. General Indication of Other Pertinent Matters Discussed

No other pertinent matters were discussed during the interview of May 17, 2010.

#### 7. General Outcome of the Interview

An agreement between the Examiner and Applicants’ representative was reached. In particular, it was agreed that the Jennings and the Commarmot references fail to disclose or suggest, inter alia, **“the cap extending over the diaphragm and the sleeve so as to secure the vessel to the sleeve while clamping the diaphragm for sealing the open upper end of the vessel,”** as recited in amended claim

15. Thus, it was agreed that the Jennings and the Commarmot references fail to disclose or suggest the subject matter recited in independent claims 15 and 29.

**Claim Rejections - 35 U.S.C. § 103**

Claims 15-21 and 23-29 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2002/0101310 to Jennings ("the Jennings reference") in view of U.S. Patent No. 4,693,867 to Commarmot et al. ("the Commarmot reference"). Applicants respectfully traverse this rejection for the reasons discussed below.

In order to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a), all of the claim limitations of the rejected claims must be described or suggested by the cited document(s).<sup>1</sup> Applicants respectfully submit that the cited documents do not meet this criterion, because no combination and/or modification of the Jennings and the Commarmot references will describe or suggest all of the claim limitations of rejected claims 15-21 and 23-29, and therefore, a *prima facie* case of obviousness has not been established.

For example, claim 15, as amended, recites, *inter alia*:

the cap **extending over the diaphragm and the sleeve** so as to secure the vessel to the sleeve while clamping the diaphragm for sealing the open upper end of the vessel. (*emphasis added*)

Applicants respectfully submit that the Jennings and the Commarmot references do not disclose or suggest the cap extending over the diaphragm and the sleeve members.

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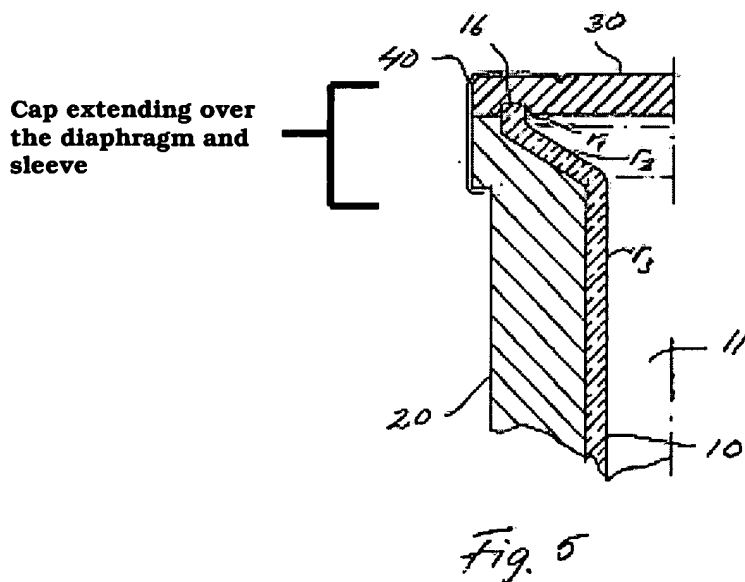
<sup>1</sup> See *In Re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). See also MPEP § 2143.03.

In the outstanding Office Action, the rejection is based on an assertion that the collet assembly 86 of Jennings corresponds to the "a cap having a through hole."<sup>2</sup>

Applicants respectfully disagree.

Specifically, as shown in at least FIG. 11 of Jennings, the collet 86 surrounds the open end of the vessel 105 and is positioned within the attenuator 33 ("sleeve"). In other words, the collet 86 does not extend over the septum 134 ("diaphragm") and the attenuator 33 ("sleeve").

In contrast, claim 1 recites the cap 40 extending over the diaphragm 30 and the sleeve 20. By such configuration, it may be possible to secure the vessel to the sleeve while clamping the diaphragm for sealing the open upper end of the vessel. In this regard, FIG. 5 is reproduced below.



<sup>2</sup> See Office action mailed March 3, 2010, page 2, paragraph 3.

Accordingly, Applicants respectfully submit that the Jennings and the Commarmot references, individually or in combination, fail to disclose, or even suggest, “the cap extending over the diaphragm and the sleeve so as to secure the vessel to the sleeve while clamping the diaphragm for sealing the open upper end of the vessel,” as recited in amended claim 15.

Since the rejection fails to disclose or suggest each and every element of the rejected claims, Applicants respectfully submit that no *prima facie* case of obviousness has been established with respect to claim 1.

Further, in order to establish a *prima facie* case of obviousness, the Examiner must establish that it would have been obvious for one of ordinary skill to have combined the teachings of the cited documents.<sup>3</sup> One way to establish this would be to show “some articulated reasoning with some rationale underpinning to support the legal conclusion of obviousness” and “identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.”<sup>4</sup> Furthermore, the Examiner must make “*explicit*” this rationale of “the apparent reason to combine the known elements in the fashion claimed,” including a detailed explanation of “the effects of demands known to the design community or present in the marketplace” and “the background knowledge possessed by a person having ordinary skill in the art.”<sup>5</sup>

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<sup>3</sup> See *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. at 398, 82 USPQ2d at 1396 (2007).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

It is respectfully submitted that the Examiner has not met these criteria. For example, the Examiner asserts that:

it would have been obvious to one of ordinary skill in the art to substitute the sleeve 86 of Commarmot with the attenuator of Jennings because they are known sleeves to hold microwave reaction vessels in a defined position during the reaction.<sup>6</sup>

However, it is respectfully submitted that the above statement is merely conclusory and do not comprise an “*explicit rationale*” as required by *KSR Int’l*. Therefore, because the Examiner has not provided an explicit analysis as required by *KSR Int’l*, a *prima facie* case of obviousness has not been established.

In view of the above, Applicants respectfully submit that the Jennings and the Commarmot references fail to teach or suggest each and every element of claim 15, and therefore, claim 15 is allowable over the cited prior art. Claim 29 is also allowable for the similar reasons discussed above regarding claim 15. Claims 16-21 and 23-28 are dependent from claim 15, and therefore, also allowable. Accordingly, Applicants respectfully request that the rejection under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

Claim 22 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Jennings in view of Commarmot and further in view of U.S. Patent No. 5,520,886 to Bennett et al. (“the Bennett reference”). Applicants respectfully traverse this rejection for the reasons discussed below.

Claim 22 is believed to be allowable for at least the reasons set forth above regarding claim 15. The Bennett reference fails to provide the teachings noted above

as missing from the Jennings and the Commarmot references. Since claim 22 is patentable at least by virtue of its dependency on claim 15, Applicants respectfully request that the rejection of claim 22 under 35 U.S.C. § 103(a) be withdrawn.

### **Request for Interview**

Applicants respectfully request, prior to the issuance of an action on the merits, and if the application is not in condition for allowance, that the Examiner grant another interview with Applicants' representative in order to discuss the outstanding Office Action, and the differences between the cited prior art and the subject matter cited in the claims.

### **CONCLUSION**

In view of the above remarks and amendments, Applicants respectfully submit that each of the pending objections and rejections has been addressed and overcome, placing the present application in condition for allowance. A notice to that effect is respectfully requested. Further, the above remarks demonstrate the failings of the outstanding rejections, and are sufficient to overcome the rejections. However, these remarks are not intended to, nor need they, comprehensively address each and every reason for the patentability of the claimed subject matter over the applied prior art. Accordingly, Applicants do not contend that the claims are patentable solely on the basis of the particular claim elements discussed above.

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<sup>6</sup> See Office action mailed March 3, 2010, page 4, first full paragraph.



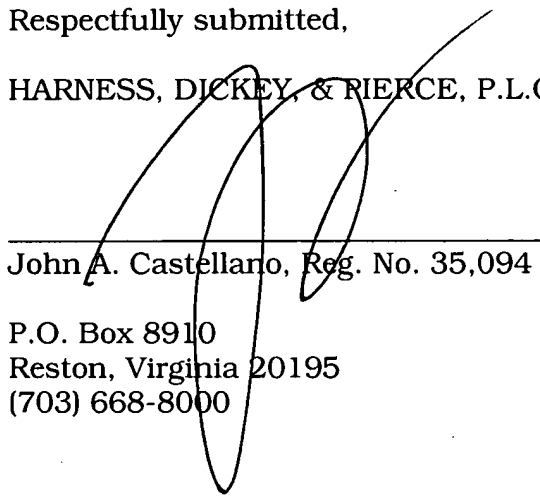
Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned, at the telephone number below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKY, & RIERCE, P.L.C.

By

  
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